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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,809

08/09/2006

Karl-Heinrich Schneider

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EXAMINER

HOLT, ANDRIAE M

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

03/05/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,809	<b>Applicant(s)</b> SCHNEIDER ET AL.	
	<b>Examiner</b> Andriae M. Holt	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/9/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Claims 1-40 are pending in the application.

#### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Group I, claim(s) 19-28 and 39-40**, drawn to a seed treatment formulation and a method for control of undesirable vegetation, the composition comprising a) at least one pesticidal agent; and b) a carboxyl group containing polymer or copolymer selected from the group consisting of styrene butadiene rubber latex polymers, acrylate copolymers and ethylene vinyl acetate copolymers.

**Group II, claim(s) 29-33**, drawn to a method for the preparation of a seed treatment formulation comprising combining at least one pesticidal agent and a carboxyl group containing polymer or copolymer.

**Group III, claim(s) 34-35**, drawn to seeds treated with a seed treatment formulation having a) at least one pesticidal agent; and b) a carboxyl group containing polymer or copolymer selected from the group consisting of styrene butadiene rubber latex polymers, acrylate copolymers and ethylene vinyl acetate copolymers.

**Group IV, claim(s) 36-37**, drawn to a method of treatment of seeds prior to sowing comprising a) applying to a solvent a seed treatment formulation and b) applying to a seed a mixture obtained in step a).

**Group V, claim(s) 38**, drawn to a method of treatment of seeds prior to sowing comprising i) hydration of seeds under controlled conditions followed by germination of seeds under controlled conditions and ii) treatment of seeds with a seed treatment formulation.

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or

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corresponding special technical features for the following reasons: JP 08-275621 discloses the coating of rice seeds with adhesive resin layers containing agrochemicals. JP 08-275621 further discloses styrene butadiene rubber latex, ethylene-vinyl acetate or acrylic-styrene copolymers are used in the seed coating process. EP 1,078,563 discloses seed coating compositions comprising a pesticidal agent and polymers including polymers selected from ethylene vinyl acetate copolymer and butyl acrylate/vinyl acetate copolymer. EP 1,078,563 discloses the glass transition is in a range of -40° C and 10° C. Therefore, a feature found in the prior art and different inventions cannot be considered to be a special technical feature.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

**Claims 1 and 29** recite the following species of carboxyl group containing polymer: a) styrene butadiene rubber latex polymers, b) acrylate copolymers, and c) ethylene vinyl acetate copolymers.

**Claims 26 and 30** recite the following species of “alkyl (meth)acrylate”: Methyl (methyl)acrylate, ethyl (meth)acrylate.....or dodecyl (meth)acrylate.

**Claims 27 and 31** recite the following species of “(meth)acrylamide”: Dimethyl (meth) acrylamide, diethyl (meth)acrylamide....or diethylaminopropyl(meth)acrylamide.

**Claim 28** recites the following species of “styrene derivative”:  $\alpha$  -methyl styrene, o-methyl styrene.... or p-methoxystyrene.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant is

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required to elect a single species for carboxyl group containing polymer of claims 1 and 29. If Applicant elects acrylate copolymers, a compound of claims 26 or 30 (alkyl (meth)acrylate), a compound of claims 27 and 31 ((meth)acrylamide), and a compound of claim 28 (styrene derivative) should be elected. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

**Claim 1** recites the species of "carboxyl group containing polymer" " used in the invention of Group I.

**Claim 26** recites various species of "alkyl (meth)acrylate" used in the invention of Group I.

**Claim 27** recites various species of ""(meth)acrylamide " used in the invention of Group I.

**Claim 28** recites various species of "styrene derivative" used in the invention of Group I.

**Claim 29** recites various species of "carboxyl group containing polymer " used in the invention of Group II.

**Claim 30** recites various species of "alkyl (meth)acrylate " used in the invention of Group II.

**Claim 31** recites various species of "(meth)acrylamide " used in the invention of Group II.

The following claim(s) are generic: 1 and 13

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and PCT Administrative Instructions, Annex B, Part 1 (f)(I)(B)(2), the species are not art recognized equivalents.

A telephone call was made to Bashir Ali on February 16, 2010 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are

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subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is reminded in order for the restriction requirement to be complete an election of a single invention from Groups I-V should be made and an election of a single species from the following species: carboxyl group containing polymer such as

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acrylate copolymers; alkyl (meth)acrylate such as methyl (methyl)acrylate;

(meth)acrylamide such as dimethyl (meth) acrylamide and styrene derivative such as  $\alpha$ -methyl styrene.

### CONCLUSION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andriae M. Holt whose telephone number is (571)272-9328. The examiner can normally be reached on 7:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richter Johann can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andriae M. Holt  
Patent Examiner  
Art Unit 1616

/John Pak/  
Primary Examiner, Art Unit 1616